

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1615.00
COMPLAINT INVESTIGATOR: Steve Starbuck
DATE COMPLAINT FILED: September 8, 2000
RECONSIDERATION REQUESTED: October 20, 2000 (no revisions to original report at that time)
DATE OF REVISED REPORT: March 12, 2001**

** This report was originally issued on October 4, 2000. Because the issue of legal settlement and enrollment of a student whose legal settlement is in question continues to be discussed within the Department of Education, the complaint report was revised on March 12, 2001 to reflect additional details about the student's documentation of residence and actual enrollment in school. Revisions to the original report are underscored.

COMPLAINT ISSUES:

Whether the Merrillville Community Schools and the Northwest Indiana Special Education Cooperative violated:

511 IAC 7-18-2(a) with regard to the school's alleged failure to provide a free appropriate public education to a student with a disability who is less than 22 years of age and has not received a regular high school diploma.

511 IAC 7-28-4 with regard to the school's alleged failure to recognize the student's rights that accrue at the age of 18 and requiring that the student's sister obtain guardianship of the student in order for the student to enroll in school.

TELEPHONE CONTACTS:

<u>Individual's Relationship to Student</u>	<u>Date</u>
Complainant	September 12 and 29, 2000
School Attorney	September 20, 2000
State Attendance Officer	September 29, 2000

DOCUMENTS RECEIVED BY INVESTIGATOR FROM:

Complainant: Letter of complaint dated September 7, 2000, and received by the Division of Special Education (the Division) on September 8, 2000, including copies of the following documents:

C Student's certificate of birth issued October 14, 1997;

- C Four pages of an individualized education program (IEP) dated June 8, 1999;
- C Unofficial high school transcript dated March 27, 2000;
- C Letter to the special education planning district from the complainant dated August 30, 2000;
- C Receipt dated September 1, 2000, from the school corporation for enrolling the student in adult education classes;
- C Student's voter registration application dated September 1, 2000;
- C Student's state identification card issued September 1, 2000;
- C Notarized statement regarding the student's place of residence dated September 1, 2000;
- C Letter to the complainant from the assistant superintendent dated September 6, 2000;
- C Letter to the assistant superintendent from the complainant dated September 7, 2000;
- C Letter to the assistant superintendent from the complainant dated September 8, 2000;
- C Letter to the complainant from the superintendent dated September 15, 2000; and
- C Letter to the superintendent from the complainant dated September 19, 2000.

On September 29, 2000, the complainant submitted to the Division a copy of the Third Party Custodial Statement and Agreement form she signed on September 21, 2000.

School: Letter of response dated September 19, 2000, from the local director of special education (director) and received by the Division on September 21, 2000. A letter from the school's attorney dated September 22, 2000, was received by the Division on September 25, 2000.

Division: Memorandum from the Department of Education, Office of General Counsel, dated and received on September 28, 2000.

FINDINGS OF FACT:

1. The student is eighteen years old and was enrolled in school under a third-party custodial agreement on September 26, 2000. At the last school she attended, prior to this most recent enrollment, the student had been determined eligible for special education due to a mild mental handicap.
2. The sister of the student states she attempted to enroll the student in school on August 24, 2000, but was prevented from doing so because the school stated the student was not emancipated and that the student's parents did not reside within the school district. According to the sister, the school advised her to obtain legal guardianship of the student so the student could be enrolled in school.
3. The assistant superintendent advised the complainant in a letter dated September 6, 2000, that the student would not be allowed to enroll in school due to the fact that the student was not emancipated and because the student's parents did not reside within the school district. In a letter dated September 15, 2000, the superintendent advised the complainant to provide him with a detailed written explanation as to why:
 1. the student was not residing with her parents;
 2. the student's parents were unable to financially support the student; and
 3. the complainant was unwilling to seek legal guardianship of the student.The superintendent informed the complainant in the letter that once this information was provided he would determine whether or not the sister would be required to obtain legal guardianship and

the necessary steps to enroll the student in school.

4. In a letter to the Division dated September 22, 2000, the school's attorney indicated the superintendent would allow the complainant to enroll the student in school upon execution of a third-party custodial agreement, since the complainant was having difficulty obtaining legal representation to acquire legal guardianship. The student's mother signed the Third Party Custodial Statement and Agreement form on September 23, 2000, and the sister signed the custodian portion of the agreement on September 21, 2000.
5. The complainant states the student has never been determined incompetent by a court, has not received a high school diploma, and is capable of caring for herself and her two-year old child. The complainant states she provided school personnel with the following documentation to verify the student's eligibility for enrollment in school:
 - a. a birth certificate indicating the student was born on August 17, 1982;
 - b. social security card;
 - c. notarized statement signed by the complainant stating the student had been living with the complainant since August 21, 2000, and that in the future the student would be responsible for paying for rent, utilities, and household expenses;
 - d. copy of the student's state identification card;
 - e. copy of the student's voter registration card;
 - f. transcript from previously attended high school;
 - g. IEP from previously attended high school; and
 - h. receipt to verify the student had been enrolled in adult education classes through the local school corporation.
6. The school received a faxed statement from the Student's sister, a copy of the Student's voter registration card, and a copy of the Student's state identification card on September 1, 2000, all stating the Student's address as being within the boundaries of the Merrillville Community Schools. The Student was allowed to enroll on September 25, 2000.

CONCLUSIONS:

1. Findings of Fact #1 through #6 reflect that the school failed to provide a free appropriate public education to a student with a disability who is less than 22 years of age and has not received a regular high school diploma. The Student presented documentation of her residence within the school corporation's boundaries, but the School continued to dispute the Student's legal settlement and denied enrollment. Although the school is entitled to request documentation of a student's residence, enrollment should occur upon presentation of such documentation. If a school subsequently determines that an enrolled student does not have legal settlement within the school corporation, it may initiate expulsion proceedings pursuant to IC 20-8.1-5.1-11, subject to review by the State Board of Education under IC 20-8.1-6.1-10(a)(1). By delaying for three weeks the Student's ability to enroll in school after presenting documentation of residence within the school corporation, a violation of 511 IAC 7-18-2(a) is found.
2. Findings of Fact #1 through #6 indicate the school failed to recognize the student's rights that accrue at 18 years of age. 511 IAC 7-17-57(5) defines a "parent" to include "[a]ny student with a disability who is eighteen (18) years of age and has not had a guardian appointed by a court. Further, the custodial forms created by the State Superintendent of Public Instruction under I.C.

20-8.1-6.1-1(c) are intended to assist in the resolution of legal settlement issues for students under the age of 18 years. In addition, school personnel did not have the authority to require the student's sister to obtain guardianship of the student in order for the student to be enrolled in school. Therefore, a violation of 511 IAC 7-28-4 is found.

The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Merrillville Community Schools and the Northwest Indiana Special Education Cooperative shall:

1. Rescind the Third Party Custodial Statement and Agreement signed by the student's parent and sister. Provide a written statement to the Division that this has been completed no later than than April 20, 2001
2. Convene a CCC meeting to determine the need for compensatory educational services. Submit a copy of the IEP and Case Conference Summary Report to the Division no later than April 20, 2001.
3. In-service all appropriate personnel within the school corporation as to the requirements specified in I.C. 20-8.1-6.1-1(b), (c), and (d), 511 IAC 7-17-57, 511 IAC 7-27-6(11), and 511 IAC 7-28-4. Submit documentation to the Division that the in-service training has been completed no later than April 20, 2001. The documentation should include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.